

SECRET

FCC Mail Room

E-Rate Central/CentralEd
625 Locust Street, Suite 1
Garden City, NY 11530

Anthony D. White Jr.

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to reverse their decision. The SLD denied (Attachment 3) our appeal on March 6th of 2009 with the following explanation:

"FCC rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain circumstances. Those conditions are documented in the Reference area on the USAC website (See delivery Deadlines and Extension Requests for more information.) In accordance with the FCC Report and Order (FCC 01-195) released on June 29, 2001, in order to provide additional time to implement contracts or agreements with service providers for non-recurring services, applicants must submit documentation to the Administrator requesting relief on or before the original non-recurring services deadline. Your appeal has not brought forth clear information establishing that application for relief was made prior to this deadline. Therefore your appeal is denied.

We kindly request the commission to Waive USAC's decision.

Discussion

There are two parts of USAC's denial. The first reason is the FCC only allows extensions under certain circumstances which are located on the SLD's website. Second, it has to be filed before September 30th the year in which the service delivery deadline lays. There are four explanations on the SLD's website which would grant an extension. The first two reasons on the website, the SLD would automatically grant an extension. The third item, which falls under our argument, would be granted only if filed before September 30th.

We clearly understand and respect USAC's rules on acceptable and timely extension request, but with the complexity of implementing \$3 million worth of services there are several factors that backlog completion of these projects.

- ❖ With Middletown being funded in the dead of winter, it is very hard to complete electrical and cabling work for a district that is imbedded with snow and freezing temperatures.
- ❖ With students still attending classes, it's nearly impossible to retrofit your schools for new projects. That window is only open during summer hours.
- ❖ Huge cabling projects for a "mid-major" city school district take time to implement and complete.
- ❖ Hardware that was funded by the SLD can't be installed until the cabling projects are completed.

We've determined that filing this extension request after September 30th was a clerical and ministerial error. The FCC has already addressed this issue in its *Bishop Perry*¹ and *Alaska Gateway*² orders. We highlight the Alaska Gateway order to point out specific wording from the FCC's decision on the FCC Form 486. Even though this order specifically deals with the Form

¹ Bishop Perry (06-54)

² Alaska Gateway (06-1871)

486, we believe this also follows the rules for all forms and requests that proceed and follow the FCC Form 486. The decision states:

“Given that the applications missed a USAC procedural deadline and did not violate a Commission rule, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applications. In these cases, the applications have demonstrated that rigid compliance with USAC’s application procedures does not further the purposes of section 254(h) or serve the public interest.”

With any rule and/or regulation, interpreting one or the other can be a task all by itself when it comes to the E-rate program. As we noted previously, the SLD directed the district to their website to “interpret” their reason for denial.

We point to the *Nonrecurring Services Order*³ for initial guidance by the FCC on this appealed issue. In this order the FCC clearly states in paragraph 15 the following:

“Similar to the requirements outlines in the November 2000 Extension Order, applicants who wish to satisfy criteria (3) should submit documentation to the Administrator requesting relief on these grounds on or before the original non-recurring services deadline.”

We also point to paragraph 16 which states the following: *“Because we are unable to anticipate every type of circumstance that may arise under criteria (3), we instead direct the Administrator to address such situations on a case by case basis, consistent with the reasoning set forth in this Order.*

While reading the rules set forth by the FCC in these two paragraphs, you can interpret this guidance by thinking that even though you should file an extension request by the 30th of September, the SLD should undertake a review on a case by case basis.

The Middletown School District met criteria # 3 set forth on the SLD’s website, but not the extension request deadline. We feel that the district’s explanation of not implementing services by the deadline was warranted and this case should have been treated on a “case by case basis” as noted in the Nonrecurring Services Order. Thus, working with the district to nail down specific time frames of when this project could be completed.

Conclusion

We understand that USAC determines deadlines on the basis of running a program. Nevertheless, in some circumstances entities alike run into situations beyond their control. As noted in the Bishop Perry order, “a departure from required filing deadlines may be warranted upon careful

³ FCC 01-195, Rel. June 29, 2001

review of the Petitioner's case and when doing so will service the public interest." The "Public Interest" in this appeal is the 7,000 students at the Middletown City School District.

The Middletown CSD was funded at an 80% discount level in 2005 for Internal Connections and has not been funded since. Since the SLD has not reached to fund 80% entities since 2005, we feel this might be the only chance the district can take advantage of the E-rate funds granted. Due to the economic climate and the economic hardship, in which the people are enduring in upstate New York, budgets for schools district will be scaled back dramatically. Granting this appeal might be the only chance for this district to receive discounted services for a long time.

Due to the fact there is no evidence of waste, fraud, or abuse, we kindly request the FCC to grant the Middletown CSD a service delivery extension.

Respectfully submitted,



Anthony White Jr.

Attachments:

- #1 Original Extension Request**
- #2 SLD Appeal**
- #3 SLD Denial Letter**

Attachment 1

E-RATE CENTRAL

MEMO

E-Rate Central/CentralEd
625 Locust Street, Suite 1
Garden City, NY 11530

Tel: 516-832-2887 • Fax: 516-832-2877

Service Delivery Deadline Extension Request
Schools and Libraries Division – Correspondence Unit
100 S. Jefferson Rd.
P.O. Box 902
Whippany, NJ 07981

Contact: Anthony White Jr.
E-mail: a-white@e-ratecentral.com
Form 471 #: 489400
FRNs: 1356846, 1356848, 1356851, 1356854, 1356863, 1356858, and 1356860, 1356863
Service Provider Name: Core, BTS
SPIN: 143030838

Reason for Request:

For the FRNs referenced above the district is requesting a service delivery extension because the service provider (Core, BTS) will be unable to complete delivery and installation for reasons beyond the control of the service provider. Installation of services can't be completed before the deadline, because of renovations and the completion of cabling that took place within the district. It will be impossible for the service provider to install hardware when the schools are renovating their schools. The district was hoping that construction and the cabling project was completed by the current deadline (9/30/2008). We are kindly requesting to extend the service delivery date to 12/30/2009.

If there are any questions concerning this request, please contact me.

Sincerely,

Anthony D. White Jr.
E-Rate Coordinator
E-mail: awhite@e-ratecentral.com
Web: www.e-ratecentral.com

Attachment 2

E-RATE CENTRAL

MEMO

E-Rate Central/CentralEd
625 Locust Street, Suite 1
Garden City, NY 11530
Tel: 516-832-2887 • Fax: 516-832-2877

2/24/2009

USAC - Letter of Appeal
Schools and Libraries Program
Correspondence Unit
P.O. Box 902
100 South Jefferson Road
Whippany, NJ 07981

Applicant Name: Middletown CSD
Entity Number: 123738
Funding Year: 2005
Form 471 Application Number: 489400
Funding Request Numbers: 1356846, 1356848, 1356851, 1356854, 1356858, 1356860,
1356863

On January 30, 2009 the SLD denied an implementation extension request for the FRNs noted above. The denial reason was "request received after the FCC deadline for Implementation Deadline Extension requests which was 9/30/2008."

The Middletown City School District was awarded over \$3 million in funding year 2005. The district has been working diligently on installing and implementing services for the past couple of years. The district has sent in numerous service substitutions, spin changes, contract date extensions, and invoice deadline requests. In reference to the FRNs noted above, the last date to install services was 9/30/2008. These services were not able to be delivered by Core BTS, Inc. due to incomplete cabling infrastructure projects.

The district has already purchased this hardware and was ready to install services until they realized that the implementation deadline passed. The number of school buildings in the district and the overall scope of cabling work resulted in an extended implementation schedule. Even though the cabling work continues, the hardware purchases have been completed and the equipment is ready to be installed within the next 60-90 days.

We understand the filing deadline request for installation was 9/30/2008, but we are kindly requesting the SLD to reverse their decision so the Middletown CSD can implement the services that was originally rewarded to them. The Middletown CSD was

funded at a 80% discount level in 2005 and has not been funded since for their 80% schools. Due to the economic climate, this is probably the only chance the district can take advantage of the discounted services they are receiving, because the SLD has not reached to fund the 80% entities since 2005.

We determined that this constitutes a clerical and ministerial error including failure to file an Implementation Extension Request in a timely manner. The FCC has already addressed this issue in its *Bishop Perry* and *Alaska Gateway* Orders: The Bishop Perry order states the following:

"Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 471 found in section 54.507 of the Commission's rules. Under Bureau precedent deadlines have been strictly enforced for the E-rate Program, including those pertaining to the FCC Form 471. We nevertheless find that good cause exists to waive the deadline in these cases. Generally, these applicants claim that staff mistakes or confusion resulted in the late filing of their FCC Form 471s. We note that the primary job of most of the people filling out these forms includes school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts."

Even though this specific order is based on the FCC Form 471, we feel that any Form/Request, which includes a deadline, falls under these guidelines noted above. In the *Alaska Gateway* order, we highlight the following statement:

"Given that the applicants missed a USAC procedural deadline and did not violate a Commission rule, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest."

We understand that the SLD determines deadlines on the basis of running a sufficient program, but in some circumstances entities alike run into situations beyond their control. As noted in the *Bishop Perry* order "a departure from required filing deadlines may be warranted upon careful review of the Petitioner's case and when doing so will serve the public interest." In this case, approving this appeal will serve the students interest at the Middletown CSD, so they can receive equipment that will enhance the district's teaching and learning experience.

Due to the fact there is no evidence of waste, fraud, or abuse, we kindly request the SLD to grant the Middletown SLD an implementation extension to 9/30/2009.

Thank you

Anthony D. White Jr.

E-Rate Coordinator

E-mail: awhite@e-ratecentral.com

Web: www.e-ratecentral.com

Attachment 3



Administrator's Decision on Implementation Extension Appeal

March 6, 2009

Anthony White, Jr.
E-rate Central
625 Locust St., Ste. 1
Garden City, NY 11530

Re: Middletown City School District

Re: Your appeal of the denial of your implementation extension request

471 Application Number: 489400
Funding Request Number(s) 1356846, 1356848, 1356851, 1356854, 1356858,
1356860, 1356863
Correspondence Dated: February 24, 2009

After thorough review and investigation of all relevant facts, the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal.

Funding Request Number(s): 1356846, 1356848, 1356851, 1356854, 1356858,
1356860, 1356863

Decision on Appeal: **Denied in full**

Explanation:

FCC Rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain conditions. Those conditions are documented in the Reference area on the USAC website. (See Service Delivery Deadlines and Extension Requests for more information.). In accordance with FCC Report and Order (FCC 01-195) released on June 29, 2001, in order to provide additional time to implement contracts or agreements with service providers for non-recurring services, applicants must submit documentation to the Administrator requesting relief on or before the original non-recurring services deadline. Your appeal has not brought forth clear information establishing that application for relief was made prior to this deadline. Therefore, your appeal is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the USAC/Schools and Libraries web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

Thank you for your continued support of and participation in the E-rate program.

Schools and Libraries Division
Universal Service Administrative Company

cc:

Jaime McGowin
Core BTS, Inc
201 W. 103rd Street
Suite 240
Indianapolis, IN 46290